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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,399	11/28/2003	Reinhard Erwin Jackson	14537	7193

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EXAMINER

WRIGHT, ANDREW D

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/722,399

Applicant(s)

JACKSON, REINHARD ERWIN

Examiner

Andrew Wright

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 12-14 is/are rejected.
- 7) ☒ Claim(s) 5-11 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/28/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the gear box pivotally mounted on the frame and the gear box and drive shaft adapted to be pivoted between inoperable and operative positions (claim 1) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 5 is objected to. Claim 5 recites the limitation "said second chain drive means" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim. The word "chain" should be deleted.
3. Claim 13, "ssaid" is misspelled.
4. Appropriate correction is required.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider (US 4,427,392) in view of Schwarzer (US 2,940,415) and Gustine (US 3,377,976). Schneider shows a portable, pedal driven propulsion device that comprises a frame releasably mounted on the gunwale of the transom. Frame comprises quadrilateral plate (44) Pedal crank is mounted on the frame and is forward of the seat and is usable by the operator sitting in the seat. Gear box (64) is pivotally mounted on the frame, is outboard the transom gunwale, and is forward of the seat. Chains (92, 100) and sprockets (92, 104) constitute means for transmitting power from the pedal crank to the gear box. Longitudinal drive shaft (36) is connected at one end to the gear box and at another end to a propeller (14). The gear box and drive shaft can be pivoted about horizontal transverse axis (46) between an operative position and an inoperative position. The drive shaft can be pivoted to position just slightly off of the vertical such that the drive shaft will form an acute angle with the sidewall gunwales. The inoperative position is shown in figure 3. Schneider does not show that the drive shaft is substantially parallel to the gunwale in the inoperative position. Schneider does not show that the seat is mounted on the frame.

7. Schwarzer shows a pedal propulsion means with a seat and transom-mounted gear box and drive shaft, similar to that of Schneider. Schwarzer, like Schneider, shows that the gear box and drive shaft can be pivoted from an operative position to an inoperative position. Schwarzer, however, shows that the pivot can be through an angle of at least 90° (figure 2). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Schneider by

making the pivot range larger to include an angle of at least 90°. The motivation would be to provide more clearance for the propeller when in the inoperative position. Such a modification would allow the drive shaft to be pivoted to a position where it is substantially parallel with the sidewall gunwales.

8. Schneider shows the seat attached to a thwart-type seat (134) of the boat. Not all boats have such transverse seats. Gustine shows a rear facing pedal propulsion system for a boat with the seat attached to the frame. The frame is releasably attached to the gunwales. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Schneider by extending the frame from the transom to a seat portion releasably mounted on the sidewall gunwales. The motivation would be to provide a seat arrangement for boats that don't have a transverse member such as (134) shown by Schneider.

9. Regarding claim 2, Schneider shows the drive shaft (36) is mounted in tube (20).

10. Regarding claim 3, pivot pin (46) constitutes a means for supporting the tube in the positions.

11. Regarding claim 4, Schneider shows first drive means (100) connected to end of first transverse shaft (96). Second drive means (92) is connected to second end of first transverse shaft (96). Second transverse shaft (82) has one end connected to second drive means (92) and its other end connected to the gear box at bevel gear (80).

12. Regarding claim 14, both first and second drive means are endless chains.

13. Regarding claim 13, Gustine shows the seat is rigidly mounted on the frame.

14. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider in view of Schwarzer and Gustine as applied to claim 1 above, and further in view of Billman et al. (US 2,612,859). Schneider in view of Schwarzer and Gustine does not show that the seat is adjustable. It is well known and common to provide adjustable seats in boats for the purpose of accommodating different sizes of users. This is especially important in a pedal type propulsion system. Billman shows a pedal type propulsion system with a seat adjustably mounted to a frame. It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Schneider by making the seat adjustable on the frame. The motivation would be to allow different sizes of users to comfortably reach the pedals.

Allowable Subject Matter

15. Claims 5-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Drescher ('729) shows a crank type propulsion apparatus removably secured to the sidewall gunwale. A gear box and drive shaft are mounted outboard of the gunwale and are both pivotable about a transverse horizontal axis. Lerach et al. ('251, provided by applicant) shows a pedal propulsion apparatus comprising a gunwale-mounted frame and seat. Meron ('398) shows a pedal propulsion apparatus comprising a drive shaft that can be pivoted between operative and

inoperative positions. Lewis ('030, provided by applicant) shows a pedal propulsion apparatus comprising a gunwale-mounted frame and a gear box and drive shaft that are outboard of one of the sidewall gunwales.

17. Any inquiry concerning this communication should be directed to examiner Andrew D. Wright at telephone number (703) 308-6841. The examiner can normally be reached Monday-Friday from 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano, can be reached at (703) 308-0230. The fax number for official communications is 703-872-9306. The fax number directly to the examiner for unofficial communications is 703-746-3548.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andrew D. Wright
Patent Examiner
Art Unit 3617

Handwritten signature of Andrew D. Wright and the date 5/26/04.